

NETWORK DEPOSITION SERVICES
Transcript of Kenneth J. Kutchek, P.E.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

- - -

THOMAS POWER,

Plaintiff,

vs.

HEWLETT-PACKARD COMPANY,

Defendant.

)
)
)
)
) No.
) 2:17-cv-00154-MRH
)
)

Videotape Video Conference Deposition of
KENNETH J. KUTCHEK, P.E.

Tuesday, January 4, 2022

The videotape video conference deposition of
14 KENNETH KUTCHEK, P.E., called as a witness by the
defendant, pursuant to notice and the Federal Rules of
15 Civil Procedure pertaining to the taking of
depositions, taken before me, the undersigned,
16 Lance E. Hannaford, Notary Public in and for the
Commonwealth of Pennsylvania, via Zoom, commencing at
17 10:09 o'clock a.m., the day and date above set forth.

19 NETWORK DEPOSITION SERVICES
SUITE 1101, GULF TOWER
20 PITTSBURGH, PENNSYLVANIA
866-565-1929

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1 APPEARANCES VIA VIDEO CONFERENCE:

2 On behalf of the Plaintiff:

3 Friday & Cox:
4 Josh Licata, Esquire
1405 McFarland Road
Pittsburgh, Pennsylvania 15216
5 jlicata@fridaylaw.com

6 On behalf of the Defendant:

7 Coughlin & Betke:
8 Christopher Betke, Esquire
17 S. Federal Street, Suite 1450
Boston, Massachusetts 02110
9 cbetke@coughlinbetke.com

10 ALSO PRESENT:

11 Joseph Hagan, Videographer

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1 I-N-D-E-X

2 EXAMINATION BY: PAGE:

3 Mr. Betke 5, 94

4 Mr. Licata 90

5

6 EXHIBIT: MARKED:

7 Exhibit 1 - Expert report, CV, list of testimony 7

8 (Exhibit Retained by Counsel)

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1 VIDEOGRAPHER: Good morning.

2 Today is January 4th, 2022.

3 This is the videotape deposition of
4 Mr. Kenneth Kutchek taken in the matter of Thomas
5 S. Power versus Hewlett-Packard Company.

6 It has a case number of 2:17-CV-00154-MRH.

7 Our deposition is being held remotely, with
8 our witness located at 596 Longpointe Drive, Lake
9 Orion, Michigan, with a zip code of 48362.

10 My name is Joe Hagan. I'm the
11 videographer.

12 Our court reporter is Lance Hannaford.

13 Counsel attending remotely may now identify
14 themselves and who they represent.

15 MR. BETKE: I am Christopher Betke. I
16 represent HP.

17 MR. LICATA: Josh Licata on behalf of the
18 plaintiff Thomas Power.

19 VIDEOGRAPHER: If our court reporter would
20 please swear in the witness, we may begin.

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1 KENNETH KUTCHEK, P.E.

2 called as a witness by the defendant, having been
3 first duly sworn, as hereinafter certified, was
4 deposed and said as follows:

5 EXAMINATION

6 BY MR. BETKE:

7 Q Good morning, Mr. Kutcek. I represent HP
8 in this case. First of all, am I getting your name
9 correct?

10 Am I pronouncing it correctly?

11 A No. It is, actually, Kutcek.

12 Q Kutcek. All right. Thanks. I'm glad I
13 asked.

14 First of all, I don't expect to be terribly
15 long today. Some of that depends on your answers.
16 But I just want to lay out some groundrules. I know
17 you had your deposition taken before. Just to make
18 sure we are operating on the same page.

19 First and foremost, if you need to take a
20 break for any reason, to use the restroom, get a glass
21 of water or coffee, please let me know. I would only
22 ask that you answer any question in front of you
23 before we take a break.

24 Okay?

25 A Yes.

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1 Q In addition, if there is at any point in
2 time I ask a question that you do not understand,
3 obviously there is no way for me to know what is going
4 on in your head, unless you tell me that. So please
5 tell me if you do not understand any of my questions,
6 that way I can explain or rephrase it.

7 Okay?

8 A Yes.

9 Q Josh, are we going to reserve objections
10 except as to form and motions to strike until time of
11 trial?

12 MR. LICATA: That is what I was expecting.

13 Yes.

14 Q Would the witness like the opportunity to
15 read and sign the transcript?

16 A Yes.

17 Q You understand, sir, everything that you
18 say today will be taken down into a transcript. And
19 actually is being recorded. So please understand that
20 everything you say will be on the record, unless we
21 make it expressly clear we are going off the record.
22 Do you understand?

23 A Yes.

24 Q Now, just a matter of housekeeping. I have
25 in front of me what was marked Exhibit A in

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1 plaintiff's expert disclosure. That consists of the
2 expert report with statement of compensation and
3 attachments, your CV and testimony list.

4 Do you have that, sir?

5 A I don't have that specific document. But I
6 have my report, my CV, and my testimony list.

7 Q So you don't have it in the form of, quote,
8 unquote, "Exhibit A" to the expert disclosure. But
9 you have those items.

10 Is that fair?

11 A Correct. Yes.

12 Q So just to make sure we are operating on
13 the same page, the reports I am looking at is dated
14 March 16, 2020. Is that the report you are looking
15 at?

16 A Yes.

17 Q All right.

18 So Josh, if it is agreeable with you, just
19 as a matter of housekeeping, we will mark that batch,
20 your Exhibit A, as Exhibit 1 here. And we will get it
21 to Mr. Hannaford after the fact rather than stop and
22 do that now. Is that okay?

23 MR. LICATA: Fine with me.

24 (Thereupon, Exhibit No. 1 was marked for
25 identification.)

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1 Q So just for your purposes, Mr. Kutchek, the
2 following will be Exhibit A, your expert report with
3 statement of compensation and attachments -- I'm
4 sorry, Exhibit 1. Expert report with statement of
5 compensation and attachments, your CV and testimony
6 list.

7 Okay?

8 A Yes.

9 Q So if I am referring to your report, it
10 will be the report we just identified as the March 16,
11 2020 report.

12 If I refer to your CV -- let me make sure
13 we are operating on the same page -- I have a CV here
14 that begins with your professional experience at
15 Robson Forensic beginning in 2015 to present as an
16 associate.

17 Is that your CV?

18 A Yes.

19 Q Then your list of testimony is two pages
20 beginning with testimony on page 1, 7-9-20, in reverse
21 chronological order to 11-2-15. Is that what you are
22 showing on your end, too?

23 A Yes.

24 Q Sir, please state your name for the record?

25 A Kenneth Kutchek.

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1 Q Where do you work?

2 A Robson Forensic.

3 Q Is there anything -- just to short circuit
4 things a little bit, is there anything in your CV, you
5 can take a moment if you want to look at it, that you
6 believe as you sit here today is either inaccurate or
7 incorrect, that you would like to alert us to?

8 A No. Not that I am aware of.

9 Q All right.

10 Is there anything that you consider of
11 import or significance to the opinions that you
12 rendered in this case that is not on your CV?

13 A No.

14 Q Just to clarify, in other words, if you had
15 some sort of unique certification or training, or
16 something that you feel you want to bring to bear to
17 this case, but it's not listed on your CV, I would
18 like you to tell me that.

19 A Okay.

20 Q Is there anything that falls into that
21 category that you can think of?

22 A No.

23 Q How much have you billed to date on this
24 particular file?

25 A I don't know. I don't have the billing

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1 records.

2 Q How many hours have you worked on this?

3 A I don't recall.

4 Q Can you estimate at all?

5 A No. I can't.

6 Q So as you sit here today, you do not know
7 how much time you have worked on this particular case.
8 Is that fair?

9 A If you have a copy of the billing records,
10 it should be reflected in the billing records.

11 Q I do not have a copy of those. There was
12 no trick to this. If I had it, I wouldn't have asked.
13 Did you work more or less than 20 hours?
14 Let's try that as an estimate.

15 A I really don't know. It might be in the 20
16 to 30 range. I thought I supplied billing records
17 when I submitted my report.

18 Q You may have. I just don't have them.

19 A Okay.

20 Q When did you start your work on this case?

21 A It was January 2019.

22 Q How was it that you were retained? I'm not
23 asking for specifics of communications, but just
24 basically were you contacted by Mr. Licata's office,
25 or some other method?

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1 A I don't know if Josh just called me
2 directly, or called my office and was referred to me.

3 Q Have you worked with Mr. Licata or the firm
4 that he is with, Friday & Cox, previously?

5 A Yes.

6 Q Approximately how many times have you
7 worked with his firm previously?

8 A It might be about four or five times.

9 Q Over what period of time would that be,
10 four or five times over how many years?

11 A Since 2015. So six years.

12 Q Is it fair to say since you started with
13 Robson Forensic is when you started working for his
14 firm, in the occasions you talked about?

15 A Yes.

16 Q Without going into detail, can you just
17 tell me, were they product cases, or some other types
18 of cases?

19 A I think most, if not all of the other ones,
20 are electric shock type situations.

21 Q Do any of the other cases you worked for
22 Mr. Licata's firm involve notebook computers,
23 printers, or lithium ion batteries?

24 A No.

25 Q So when you began your work in January of

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1 2019 -- strike that. Let me back up.

2 We have your report that is dated March 16,
3 2020. Did you prepare any other reports in connection
4 with this case?

5 I'm not asking about drafts of this report.
6 I'm just really asking, is there another report out
7 there that sets forth opinions or findings that is
8 supplemental or different from this report?

9 A No. That is the only report.

10 Q If you go to page 16 of your report, there
11 is a list of findings. Do you see that?

12 A Yes.

13 Q Is it fair to say that these nine items
14 represent a summary of your opinions in this case?

15 A Yes.

16 Q Do you have any opinions or findings that
17 aren't set forth in summary on page 16?

18 A The only other findings would be after
19 reading your two expert reports.

20 Q All right.

21 Let's just talk about your work as opposed
22 to your responses to my experts' work. We will get to
23 that in a moment.

24 But your initial opinions in sum and
25 substance are set forth on page 16, 1 through 9.

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1 Correct?

2 A Yes.

3 Q Did you do any work of significance in
4 reaching your opinions on page 16, that is not
5 reflected in your report?

6 A No.

7 Q Did you incur any expenses in connection
8 with your work on this report? Let me put it to you
9 this way. Maybe a better way of putting it, did you
10 incur any expenses in connection with doing your work
11 for this case?

12 A Probably the only expenses would be travel
13 expenses to go to Pittsburgh to see the laptop and
14 inspect it.

15 Q Presumably there were probably some
16 incidental expenses for postage and copying, and
17 things of that nature.

18 Correct?

19 A No. Nothing like that. Just travel
20 expenses.

21 Q Now, just for a little nomenclature
22 purposes. First of all, you understand that the
23 notebook, the type of notebook at issue in this case
24 was an Elitebook 8730W. Is that correct?

25 A I will just refer back.

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1 Q Sure. You are referring to your report,
2 sir?

3 A Yes.
4 Yes. That is it.

5 Q So for ease of reference today, if you
6 don't mind, sir, I will refer to that as just the
7 Elitebook. Will you understand for purposes of today,
8 that when I refer to the Elitebook, I am referring to
9 the model Elite book 8730W; fair?

10 A Yes.

11 Q And then for -- also, just for nomenclature
12 purposes, for ease of reference, when I am referring
13 to the specific notebook, the artifact, if you will,
14 that Mr. Power had, I am going to call that the Power
15 notebook.

16 Is that okay with you?

17 A Sure. Yes.

18 Q You will know when I am specifically
19 talking about Mr. Power's notebook, the thing that was
20 involved in the incident, and when I am talking
21 generically or about the model of the Elitebook.
22 Fair?

23 A Yes.

24 Q With respect to the Power notebook, do you
25 know when it was manufactured?

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1 A I don't recall. I think 2008 comes to
2 mind. But I don't recall.

3 Q I don't know if you have access. I know
4 you reference -- on page 1 of your report you
5 reference the items you reviewed in connection with
6 this matter. Do you see that?

7 A Yes.

8 Q Is there anything you reviewed in
9 preparation of your report that is not referenced in
10 item B?

11 A No.

12 Q In fairness to you, you reference some
13 patent applications and things. You reference those.
14 But case materials, the case materials that you
15 reviewed are set forth in item B, page 1.

16 Correct?

17 A Yes.

18 Q You reference HP production 001-5238.
19 Those are the Bates stamp numbers. Do you understand
20 that?

21 A Yes.

22 Q I don't know if you have access to them.
23 But if you do, and if you don't, I will help you out,
24 but if you do, if you look at HP2466, you will see the
25 actual details with respect to the Power notebook. It

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1 indicates it was manufactured in August of 2009. Does
2 that sound about right to you?

3 A Yes. About right.

4 Q You said 2008. Pretty close off the top of
5 your head. You certainly don't have any reason to
6 dispute the date set forth in Bates stamp 2466, do
7 you?

8 A No.

9 Q And you would agree with me, sir, would you
10 not, if it was manufactured in 2009, that the process
11 of planning and designing the Elitebook would have
12 occurred at some time before August of 2009. Right?

13 A Yes.

14 Q Would you agree that would mean the
15 Elitebook itself was probably planned and designed
16 some time in 2007 or 2008?

17 A Yes.

18 Q Do you hold any professional licensure?

19 A Yes. I am a licensed professional engineer
20 in multiple states.

21 Q What states are you licensed in?

22 A I think there is 28 of them. You want all
23 of them?

24 Q No. No.

25 Are they in your CV?

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1 A Yes. They are.

2 Q And what is your licensure in? What
3 specific engineering field?

4 A Most states they just call it a
5 professional engineer. But my degree is in electrical
6 engineering.

7 Q Do you have any professional background in
8 computer design?

9 A The application of computers, but not the
10 design of computers.

11 Q In other words, have you ever worked
12 designing computers?

13 A No. I haven't.

14 Q And have you ever -- have you ever worked
15 in computer manufacturing?

16 A No.

17 Q Has your professional engineering work been
18 in the forensic field mostly?

19 A No. Just the last six years.

20 Q Prior to that, what did it consist of,
21 generally?

22 A I did various roles in electrical
23 engineering, in primarily manufacturing, industrial
24 environments.

25 Q What types of things were being

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1 manufactured in those environments?

2 A All different things. Cars, planes,
3 wastewater systems, concrete. Just a wide variety of
4 different end products.

5 Q All right. Do you have any professional
6 background in battery pack design?

7 A No. I have never designed battery packs.

8 Q How about in cell, battery cell design?

9 A No.

10 Q Same question with respect to battery pack
11 cell -- battery pack and cell manufacturing, any
12 background in that?

13 A No.

14 Q How about professional background in
15 printer design?

16 A No.

17 Q Same question with respect to printer
18 manufacturing?

19 A No.

20 Q Have you ever written any peer reviewed
21 articles about notebook computers, lithium ion
22 batteries, or printers?

23 A No.

24 Q Have you ever qualified in any court as an
25 expert in human factors?

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1 A No.

2 Q Do you hold yourself out as an expert in
3 human factors?

4 A Not specifically in human factors. But
5 sometimes in the interaction of a person with items
6 that are electrical engineering related.

7 Q How about have you ever qualified as an
8 expert in the field of warnings, product warnings?

9 A Not specifically warnings and instructions.
10 But again, I have offered opinions on warnings related
11 to electrical engineering, electrical and electrical
12 engineering related topics.

13 Q Have you ever offered any -- have you ever
14 qualified, let's talk about in court, have you ever
15 testified -- let me ask this. Have you ever testified
16 at a trial?

17 A No. I haven't.

18 Q Is it fair to say with respect to any
19 topic, regardless of the topic, you have never been
20 qualified as an expert to testify in court. But you
21 have offered opinions in cases, but that never reached
22 court. Is that fair?

23 A Correct. It wasn't about being qualified
24 or not qualified. It's just that all of the trials
25 have been cancelled and settled prior.

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1 Q I think I am using a term of art maybe you
2 are not familiar with. The idea of when I ask, just
3 so you understand my question, when I ask if you
4 qualified to testify at trial, it means you have taken
5 a witness stand, you have gone through your
6 qualifications, and the lawyer asked the court to
7 accept you as an expert, and the court said yes.

8 I'm asking whether that has ever happened
9 before with you. And I understand, because you never
10 testified at trial, that has never happened before.
11 Correct?

12 A Correct.

13 Q Have you ever been subject to a Daubert
14 challenge?

15 A No. Not that I am aware of.

16 Q Is your current work solely forensic in
17 nature?

18 A My current work with Robson Forensic is
19 solely forensic. I do have my own company, Dynamo
20 Engineering, which is on my resume, which I do some
21 electrical engineering consulting that is not forensic
22 related.

23 Q What is that electrical engineering
24 consulting you do that is not forensic related to,
25 what type of work?

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1 A It typically involves industrial machinery,
2 and automation and safeguarding of that machinery and
3 equipment.

4 Q You have a list of testimony we referenced
5 earlier to just identify it. It is attached to what
6 we are going to mark Exhibit 1. Are any of the cases
7 referenced, do any of the cases referenced in your
8 list of testimony, do any of them involve notebook
9 computers?

10 A No.

11 Q Do any of them involve lithium ion
12 batteries? Maybe I can make it easier for you. I
13 don't mean that there happened to be a lithium ion
14 battery. Is a lithium ion battery the subject of the
15 case?

16 A I understand your question. And the answer
17 is no. I take that back. Yes. That would be the one
18 dated 7-22-21.

19 Q I don't have that on my list. You may not
20 be looking at the same list.

21 A This has gotten updated since. I have had
22 depositions since then. So they have been added.

23 Q So hang on one second. In fairness to you,
24 I am going to make sure you are looking at the same
25 thing. Let's backtrack one second.

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1 A Okay.

2 Q Setting aside the issue of what is on your
3 list of testimony, I am just going to go back over
4 these prior questions. Have you rendered any opinions
5 in any cases that involve notebook computers besides
6 this one?

7 A No.

8 Q Same question with respect to lithium ion
9 batteries. I guess you are going to say this 7-22-21
10 case.

11 Is that correct?

12 A Yes. That would be the only one.

13 Q What is the name of that case?

14 A It was DJ Auto versus VL Systems.

15 Q Where is that case pending?

16 A It is no longer pending. But it is in West
17 Virginia.

18 Q And what was the lithium ion battery in
19 that case? And what was the issue?

20 A The summary of that case was there was a
21 fire in an auto shop. It was believed that the
22 alignment machine that aligns wheels on cars, it
23 contained lithium ion batteries. And one of the
24 battery cells exploded and started a fire.

25 Q What side of the case were you on in that

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1 case?

2 A That one was plaintiff.

3 Q All right. Was that with Mr. Licata's
4 firm?

5 A No.

6 Q What was the name of the firm that you
7 represented, or that you worked with?

8 A I don't recall the firm name. I don't
9 recall the attorney's name either.

10 Q We think we are so important.

11 A I'm an engineer. I focus on the technical
12 side.

13 Q Just a few months later, Josh, they have
14 forgotten us.

15 What type of lithium ion battery was it in
16 that case?

17 A It was a foil pack battery.

18 Q That is not what is used generally in
19 notebook computers.

20 Correct?

21 A Well, not this notebook computer.

22 Q All right.

23 What type of battery is used in the
24 Elitebook?

25 A They have a series of 18650 cells.

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1 Q Unlike the foil pack, the lithium ion
2 battery, the casing of the 18650 cell is steel. Is
3 that not correct?

4 A That's correct.

5 Q Have you had any cases, in which you
6 rendered opinions that involved printers?

7 A No.

8 Q Now, when you initially began work on this
9 case in January of 2019, did you review the complaint?

10 A I am sure I did. Yes.

11 Q Was it your understanding, when you first
12 began work on this case, that the plaintiff was
13 contending that the battery pack was original to the
14 HP product?

15 A I don't recall the exact claims.

16 Q Did you have an understanding, when you --
17 strike that.

18 When was the first time you actually looked
19 at the artifact in this case, the Power notebook and
20 the associated batteries?

21 A I think it was September of '19.

22 Q If you take a look at your report, it talks
23 about a visual inspection on Christmas Eve, believe it
24 or not, of 2019, did you look at something before
25 then?

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1 A Actually, I did just realize that is a
2 mistake. December 14 should be September 14th -- or
3 September 24th it should be. Not December 24th.

4 Q That would be a pretty bad way to spend --
5 no offense. But it would be a pretty bad way to spend
6 your Christmas Eve.

7 So if I am to understand your testimony,
8 just to make it clear for the record, if I look at
9 page 1 of your report, item 11, where it says computer
10 visual inspection on December 24th, 2019, that should
11 in fact say September 24, 2019.

12 Correct?

13 A Yes.

14 Q So as of September 24, 2019, you had an
15 opportunity to review the artifacts, the physical
16 evidence in this case.

17 Correct?

18 A Yes. On September 24th.

19 Q Correct.

20 Did you -- what observations did you make
21 of it at that time?

22 A I mean, it was just a visual inspection. I
23 didn't disassemble it, or take anything apart. I
24 mean, it was just obvious that the battery had an
25 incident, and multiple cells were involved.

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1 Q Let me back up.

2 Why don't you just tell me everything you
3 did in the process of rendering your opinions set
4 forth in Exhibit 1. Just generically. Talk to me
5 what you did.

6 You don't have to give me like every
7 specific detail. Big picture, what did you do to
8 reach the opinions that are set forth in Exhibit 1?

9 A It would be reviewing the information that
10 is listed in the report that was provided to me. That
11 would be some of the HP documents, the deposition of
12 Power, and the deposition of the two HP persons.

13 There was a video. I was provided some
14 photos taken by others. And then I did my own
15 inspection. I reviewed an x-ray that was done on the
16 battery -- on the laptop. And then I reviewed the CT
17 scan that was completed on the laptop.

18 Q And then you also -- just again in
19 fairness, you also did some searching of a patent,
20 presumably a patent database of some sort?

21 A Yes.

22 Q What database did you search?

23 A I don't recall which database it was. I
24 mean, it was -- I used Google to do that work.

25 Q And aside from everything we just talked

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1 about, is there anything of significance you did in
2 connection with your work to reach the opinions set
3 forth in Exhibit 1?

4 A I don't understand the question.

5 Q Besides everything you just said, is there
6 anything else of significance that you did in order to
7 render the opinions that are in Exhibit 1?

8 A No.

9 Q With respect to -- I note in your report,
10 you indicate that a visual exam of the Power notebook
11 cells indicate it was -- they are not Sony 18650
12 cells.

13 Correct?

14 A I have to refer back to my report.

15 Q Please do. Maybe I can help you, if I can
16 find it.

17 Page 12, sir. If you look at page 12.
18 Under "battery pack," one, two, three, four paragraphs
19 down.

20 Do you see that?

21 A Yes. I see it now.

22 Q So in your report, just for the record I
23 will read it. "Visual exam of Power's notebook
24 battery cells indicated battery cells do not appear to
25 be Sony 18650 cells."

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1 Did I read that correctly?

2 A Yes.

3 Q And so when was it that you did that visual
4 examination? Is that the September 24, 2019 exam?

5 A That would be based on the visual exam and
6 the x-ray and the CT scan.

7 Q When did you -- I am not trying to be
8 difficult here. It says visual exam of the cells. It
9 doesn't say of x-ray and CT scans here.

10 A Okay. Then it was based on visual exam.

11 Q So that would have been the September --
12 just trying to get the date, because there was that
13 mix-up about December 24 and September 24th. That
14 would have been a visual exam you did on September 24,
15 2019.

16 Correct?

17 A Yes.

18 Q What about the visual examination caused
19 you to conclude they were not Sony cells? What was it
20 that you observed that led to that conclusion?

21 A The vent holes on the top of the cell have
22 a unique pattern based on some the manufacturers.

23 Q Okay.

24 So you could see on September 24th, 2019
25 that these were not Sony cells, because they didn't

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1 look like Sony cells from the vent cap.

2 Correct?

3 A Yes.

4 Q And the significance of that, just to go
5 back to this document that I referred to earlier,
6 which was Bates stamp 2466, the significance of that,
7 as I understand it, and you correct me, if I am wrong,
8 was that the Power notebook shipped with Sony cells.

9 Correct?

10 A I assume they did, because that is what HP
11 uses in their packs, yes.

12 Q In fact, if you were to look at 2466, it
13 indicates, specifically, that the serial number for
14 the Power notebook is shown to have, as a component
15 part, an STL pack with Sony cells.

16 Correct?

17 A Yes.

18 Q You have no basis to dispute that
19 information.

20 Do you?

21 A No.

22 Q And so the import, as I understand it, for
23 purposes of this case, was as of September 24, 2019,
24 you became aware that the cells in the Power notebook,
25 as of the time of the incident, were not original to

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1 the HP product.

2 Correct?

3 A Yes. I think Josh told me that earlier
4 than that. So that confirmed it.

5 Q When did you learn that from Josh earlier?

6 A I don't recall.

7 Q Just order of magnitude; was it days
8 before, months before, when you first got the file?

9 A I mean, it was some time from the time I
10 started until September. So in those nine months.

11 Q Some time during the nine months.

12 Is there anything, sir, that you could look
13 at, your billing records, email, that would allow you
14 to determine when you were given that information from
15 Josh?

16 A No.

17 Q You didn't to any tests as such with
18 respect to your work, did you?

19 A No. I didn't.

20 Q Do you know if the Elitebook was UL listed?

21 A I don't recall specifically. But I am
22 pretty sure it was.

23 Q First of all, what is UL, sir?

24 A Underwriter Laboratories is a third party
25 testing lab that, basically, certifies the design and

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1 manufacturing of a product.

2 Q Do you know what UL standard
3 governs consumer electronic products such as the
4 Elitebook?

5 A Not offhand.

6 Q Do you know if the battery pack and/or
7 cells that originally shipped with the Elitebook were
8 UL listed?

9 A I don't recall.

10 Q Do you know if there were any materials
11 provided to you, that would indicate that?

12 A I think it may have been discussed in one
13 of the HP depositions. And it would have been in the
14 HP production as well.

15 Q Do you know what UL standard governs
16 lithium ion battery packs?

17 A I don't recall the number.

18 Q Have you ever read it?

19 A Yes.

20 Q Can you just tell me, for the record,
21 generally, what type of tests are done on battery
22 packs per the UL standard, the applicable UL standard?

23 A I mean, there is overvoltage, undervoltage.
24 Discharge. There is flammability tests. It's a wide
25 range of tests.

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1 Q And how about with respect to cells? First
2 off, let me clarify. Sorry.

3 What standard governs lithium ion cells,
4 what UL standard governs the testing of lithium ion
5 cells?

6 A It's a different standard. It's a separate
7 standard for individual cells. Again, I don't recall
8 the exact number.

9 Q All right.

10 Then what about what tests are done by
11 cells per the UL standard?

12 A Again, I would have to refer to the
13 standard.

14 Q You don't know -- as you sit here, you
15 can't remember them off the top of your head?

16 A No. I can't recall.

17 Q All right.

18 Do you know what an exemplar is?

19 A Yes.

20 Q Just for the record, what is an exemplar?

21 A An exemplar is a product similar to one
22 that may be involved in an incident. And it is used
23 for comparison purposes.

24 Q It's basically, for our purposes here
25 today, an exemplar of the Elitebook would be another

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1 8730W. Right? That would be an exemplar, if you got
2 another one of those. Correct?

3 A Yes. Well, it would be one that had a
4 similar age and condition as well.

5 Q All right.

6 Did you obtain any exemplars in connection
7 with your work in this case?

8 A No. I didn't.

9 Q Did you attempt to?

10 A No. I didn't.

11 Q I think you answered this. But I have it
12 on my list, so I will ask it anyway. Did you
13 disassemble the Power notebook at all ever?

14 A No. I didn't.

15 Q When you made the visual examination of the
16 cells from the Power notebook to determine whether or
17 not it was -- they were consistent with Sony cells,
18 what did you compare it to?

19 A I mean, I have reference materials of
20 different cell manufacturers and compared it to that.

21 Q Where did you find -- can you identify for
22 the record that reference material?

23 A No. It's just the various documents that I
24 collected over the years. Because I have been
25 involved in other 18650 type incidents.

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1 Q All right.

2 I thought I asked you earlier if you had
3 any other cases that you were involved in with respect
4 to lithium ion batteries. Let's just go back to that.

5 When you say you have been involved in
6 other 18650 incidents, how is that -- what did I ask
7 wrong that did not get that in my last question?

8 A Your question was did I provide testimony.
9 So the one that I listed was the one case where I did
10 provide a deposition.

11 Q I thought I asked it differently after I
12 sort of rebooted. Just to make it clear, with respect
13 to notebook computers, have you been involved in any
14 cases, whether or not you testified, regarding
15 notebook computers besides this one?

16 A Notebook computers, no.

17 Q I am going to get to -- I apparently messed
18 up. So I'm going back to correct everything I did
19 just to make sure I didn't mess up.

20 With respect to printers, have you been
21 involved in any cases, whether or not you testified or
22 not, have you been involved in any cases involving
23 printers?

24 A No.

25 Q With respect to lithium ion batteries,

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1 aside from the case you referenced earlier, the West
2 Virginia case which involved lithium ion batteries,
3 have you been involved in any other cases involving
4 lithium ion batteries?

5 A Yes.

6 Q How many other cases?

7 A 20, 25.

8 Q Have you ever -- have any of those gone to
9 the point where you actually rendered a formal
10 opinion, whether or not you testified, that you wrote
11 a report?

12 A I think, if I recall, a couple of them may
13 have gone to report. And the rest did not.

14 Q Is it fair to say, with respect to the
15 rest, you were invited to a laboratory exam where
16 among other things a lithium ion battery or 18650
17 cells were considered as a possible cause of a fire?

18 A No. These were not all fire cases.

19 Q I see. All right.

20 What instances of lithium ion battery cells
21 non-fire were you involved in?

22 A Well, when I categorize it as fire, one
23 which was an auto shop. That was a significant fire
24 that involved a good portion of the building.

25 I have had quite a few cases, which I will

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1 refer to as 18650 pocket cases. And they are
2 typically involved in vape device situations. Where
3 someone may have an 18650 in their pocket, and it
4 short circuits. And either causes an explosion and
5 causes burns.

6 Q So it's in that process in handling those
7 cases over the years, these vape cases, that you sort
8 of developed or got some information regarding what
9 different 18650 cells from different manufacturers
10 might look like?

11 A Exactly. Yes.

12 Q All right. Fair. I understand now.

13 So in connection with that, that is how you
14 were able to determine for yourself that the artifact
15 cells, the ones from the Power notebook, were not
16 consistent with what Sony cells look like. Correct?

17 A Yes.

18 Q Do you offer any opinions, sir, in your
19 report as to what caused the -- by the way, are you
20 familiar with the term "aftermarket battery"?

21 A Yes.

22 Q What do you want to call -- I will go with
23 your nomenclature. What do you want to call the
24 artifact -- maybe we will just call them artifact
25 cells.

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1 And you will understand these are the
2 non-HP batteries that you identified as not being --
3 the batteries you identified as not being Sony. What
4 do you want to call them? Just call them the artifact
5 batteries?

6 A Well, there is only one battery. But it
7 consists of multiple cells.

8 Q Yes.

9 A We can call it the subject battery pack.

10 Q All right.

11 By the way, just for my nomenclature, when
12 I talk about the pack, I say pack. When I talk about
13 the battery, I mean cells. That is why I said -- you
14 said there is one battery. I would say -- Chris
15 Betke -- there is one battery pack.

16 A Yes.

17 Q So you and I are clear, when I mean to talk
18 about the pack, I will say pack. When I talk about
19 the cells, I will try to say cells. But I may also
20 say battery. If I don't say pack, I am not referring
21 to the pack. I am referring to the specific items.
22 Okay?

23 A Yes.

24 Q I understand there may have been some
25 confusion there.

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1 Do you offer any opinion in your report as
2 to what caused the pack or cells to malfunction?

3 A No. I do not.

4 Q Do you know, sir, and can you state for the
5 record the safety features of the Elitebook?

6 A No. I would have to refer back to some of
7 the HP documentation.

8 Q Did you review the schematic that was
9 provided in this case?

10 A I don't recall. I mean, I did review all
11 of the documents that were provided.

12 Q But as you sit here today, you cannot
13 recall whether or not you reviewed the schematic for
14 the Elitebook?

15 A Correct.

16 Q Did you do anything to try to determine who
17 manufactured the subject Power battery pack and cells?

18 A No. I didn't.

19 Q Do you know, sir, whether a lithium ion
20 battery is different from a lithium battery?

21 A A lot of times it is terminology. People
22 may call them different things. But they may be the
23 same thing.

24 Q Can you describe -- state for the record,
25 and I am not asking you to go in gory detail, but can

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1 you generally state for the record how a lithium ion
2 battery works?

3 A How it works?

4 Q Yes.

5 A It's just like any other type battery. It
6 has an anode, it has a cathode. And there is material
7 between the anode and cathode that is able to receive
8 a charge, and then transfer that charge back to the
9 anode and cathode when it is not in the charged mode.

10 Q What are the critical components of a
11 lithium ion battery?

12 A The critical components?

13 Q Yes. What are the key components of a
14 lithium ion battery?

15 A Again, you have in this one case, you have
16 the can. You have the top. You have the anode. You
17 have the vent. You have -- it does have safety
18 protections. The vent allows overpressurization to
19 release. You have -- I don't know how else to go into
20 the manufacturing of the cell.

21 Q Do you know -- can you describe the process
22 in how a cell might go into thermal runaway, or how it
23 goes into thermal runaway?

24 A There is different things that can cause
25 thermal runaway. It could be an external short

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1 circuit, an internal short circuit. It could be
2 overvoltage condition from overcharging. It could be
3 from overdischarge, which would be a low voltage
4 condition.

5 So there is different means to cause the
6 thermal runaway.

7 Q It can be caused by abuse as well, can it
8 not?

9 A Yes. Abuse is one as well.

10 Q Have you ever talked to Mr. Power?

11 A No.

12 Q So you never interviewed him in connection
13 with your work on this case, correct?

14 A No. Just his deposition.

15 Q You read his deposition?

16 A Yes.

17 Q And there was nothing preventing you from
18 talking to Mr. Power, in other words Josh never said
19 to you, "You can't talk to Mr. Power," did he?

20 A No.

21 Q Now, Mr. Power's deposition was taken in
22 July of 2018.

23 Correct?

24 A I don't recall the date.

25 Q I'm sorry, if you look at page 1 of your

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1 report, you have the date there. That is where I just
2 read that from.

3 A Okay. Yes. July 2018.

4 Q You weren't retained to work on this matter
5 until after that, January of 2019.

6 Correct?

7 A Correct.

8 Q Did you have any questions that came to
9 mind that perhaps weren't answered by the deposition
10 of Mr. Power, that you wanted to ask him?

11 A I don't recall.

12 Q As you sit here today, can you think of any
13 questions that you would have liked to have asked
14 Mr. Power, if given a chance?

15 A No. Not that I recall.

16 Q Directing your attention to page 16 of your
17 report. You say there, if you look at item 1 of your
18 opinion, I will read it for the record. "HP was aware
19 that non-HP approved battery packs were available for
20 sale by third party retailers, which could fit into
21 their HP notebooks."

22 Did I read that correctly?

23 A Yes.

24 Q And so first off, let me ask you. What is
25 the basis for your assertion that HP was aware that

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1 non-HP approved battery packs were available for sale
2 by third party retailers, which could fit into their
3 HP notebooks?

4 A That came straight from the deposition of
5 one of the HP individuals.

6 Q So you reference -- if you could, I am
7 going to give you a chance to just link this up, if
8 you don't mind.

9 If you look at pages 4 through 6 of your
10 report, you referenced different excerpts from the
11 depositions of the HP people.

12 I would just ask you, sir, if you take a
13 moment, and this might be a good time for a bathroom
14 break anyway. We have been going at this for an hour.

15 If it's okay with you Josh, you
16 Mr. Hannaford, and you Mr. Kutchek, we can take a five
17 minute break. And maybe on the front end of that or
18 back end of that, if you wouldn't mind taking a look
19 at pages 4 through 6, and identifying if you reference
20 anywhere in there the deposition testimony that was
21 supportive of this notion that HP was aware that
22 non-approved battery packs were available for sale by
23 third party retailers.

24 Okay?

25 A Yes.

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1 MR. LICATA: Understood.

2 VIDEOGRAPHER: We are going off the record.

3 Time indicated is approximately 11:04 a.m.

4 (Recess taken.)

5 VIDEOGRAPHER: Back on the video record at

6 11:11 a.m.

7 Q Mr. Kutchek, I gave you an opportunity to
8 take a look at pages 4 through 6 with respect to my
9 question about what is the source or basis for the
10 contention that HP was aware that non-HP approved
11 battery packs were available for sale by third party
12 retailers, which could fit into their HP notebooks.

13 A Yes.

14 I would refer back to it would be page 5,
15 the third paragraph down. Then on page 6 --

16 Q Hang on one second. Let's put on the
17 record what that is. Then we will do the next one.
18 Is that all right?

19 A Yes.

20 Q Page 5, third paragraph down. I want to
21 make sure I am in the right spot. Is it the paragraph
22 that begins "Pipho acknowledged"?

23 A Yes.

24 Q I will read for the record what that is, so
25 we have it. Then I will ask you a question about it.

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1 It says, "Pipho acknowledged there are non-HP approved
2 battery packs which can fit into the notebook. Yes, I
3 am aware, page 107. We design the notebook to
4 interact, specifically, with HP approved battery
5 packs, page 107."

6 So your reference is to page 107 of
7 Mr. Pipho's deposition.

8 Correct?

9 A Yes.

10 Q So that is one data point. Correct?
11 What was the other one?

12 A Page 6. The seventh paragraph down.

13 Q What does it begin with, sir?

14 A "Wozniak stated the notebook." The second
15 from the bottom says "section."

16 Q "Does not notify the user if a non-HP
17 approved battery was installed into the notebook"?

18 A Correct.

19 Q So a couple questions about these. What
20 jumps out at me, the statement I just read -- you know
21 what, I think I shorthanded it. Let me read it aloud
22 for the stenographer, so he gets it clean and neat.

23 You were referencing, "Wozniak stated that
24 the notebook does not notify the user if a non-HP
25 approved battery was installed into the notebook, page

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1 52."

2 Is that correct?

3 A Yes.

4 Q So let me just ask. The question I had was
5 what was the basis for your contention that HP was
6 aware that non-HP approved battery packs were
7 available for sale by third party retailers, which
8 could fit into their HP notebooks.

9 Then you referenced, with respect to
10 Mr. Wozniak, a statement where he says the notebook
11 does not notify the user, if a non-HP approved battery
12 was installed into the notebook.

13 What about that supports the notion that HP
14 was aware that retailers sold third party --
15 non-approved third party batteries?

16 A Well, he was acknowledging there was non-HP
17 approved batteries out there by not saying that they
18 don't exist.

19 Q I think I got that.

20 With respect to Mr. -- both of these
21 statements, what is your support for the proposition
22 that HP knew this as of 2007, 2008, when the Elitebook
23 was designed?

24 A I'm not aware of seeing anything about
25 their knowledge in the 2008 period.

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1 Q Anyway, those pages in the deposition will
2 speak for themselves. They will say what they say.
3 Right?

4 A Yes.

5 Q All right.

6 With respect to -- if you go to item 4 on
7 page 16, it says here, "HP was aware of the potential
8 safety hazard of using non-HP approved battery packs
9 in their HP notebooks, and warned users against it.
10 Power," meaning Mr. Power, "was exposed to this
11 hazard."

12 Did I read that correctly?

13 A Yes.

14 Q And I just clarified in my reading that
15 Power meant Mr. Power, only because I think when you
16 are talking about battery packs and power, it could be
17 confusing. So I added "Mr. Power." But we all know
18 what we are referring to.

19 Correct?

20 A Yes.

21 Q Same question that I had earlier with item
22 1. What is -- we will take a minute, let you go back
23 and look at pages 4 through 6. I assume that is where
24 your basis for this is.

25 Where is your basis for the contention that

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1 HP was aware of the potential safety hazard of using
2 non-HP approved battery packs in their HP notebooks
3 and warned users against it?

4 A I will refer back.

5 Q We can go off the record for a minute. Or
6 better yet, because we have the videographer and it
7 creates a whole kerfuffle, why don't we all keep quiet
8 for a moment. Don't talk aloud, Mr. Kutchek. Just do
9 your looking, and when you are ready, let us know.
10 Okay?

11 A Yes.

12 Okay.

13 Q Thank you sir.

14 Why don't you go ahead, I will ask the
15 question, and you can answer it.

16 What is the basis for your contention that
17 HP was aware of the potential safety hazard of using
18 non-HP approved battery backs in their HP notebooks
19 and warned users against it, Power was exposed to this
20 hazard?

21 A It would be based on statements made in the
22 depositions of the two HP individuals.

23 And the first would be Wozniak. In my
24 report it is the fourth paragraph down, the first one.

25 Q Is that "Wozniak stated the battery pack"?

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1 A Yes.

2 Q Okay. We will come back to it. What is
3 the other one?

4 A The next one would be page 6, the top
5 paragraph.

6 Q It begins "Wozniak stated the battery pack
7 has protections"?

8 A Yes.

9 Q Anything else, sir?

10 A Yes.

11 Q Go ahead.

12 A It would be page 5, second paragraph down.

13 Q "Pipho stated battery pack contained
14 warning label." That one?

15 A Yes.

16 Q Any other items, sir?

17 A I guess that's it.

18 Q Let's just read them into the record. I
19 will do them in the order they appear in your report,
20 which is not the order you gave them to me. And that
21 is fine. But just so you can follow along.

22 You referenced for support for your
23 position in your findings, No. 4, "HP was aware of the
24 potential safety hazard of using non-HP approved
25 battery packs in their HP notebooks, and warned users

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1 against it. Power was exposed to this hazard."

2 One you reference the fact that, according
3 to your report, Mr. Pipho stated that the battery pack
4 contained warning label, quote -- warning, quote,
5 "label that states replace with HP spares from page 94
6 of his deposition."

7 Correct?

8 A Yes.

9 Q And then the other two items that you
10 believe support your finding No. 4 is -- one is
11 referenced on page 5 of Exhibit 1, Mr. Wozniak's
12 testimony.

13 And I will read what you wrote in your
14 report. "Wozniak stated that the battery pack has
15 safety protections to prevent the battery pack from
16 overcharging, quote, 'the primary protection IC
17 monitors, the individual cells,'" close quote.

18 Quote, "It monitors the overall use. And
19 if it exceeds a particular voltage limit, then it
20 shuts off the current, page 26." Quote, "The primary
21 protection I see also protects against overcharge --
22 overdischarging, short circuit, page 29."

23 Did I read that correctly?

24 A Yes.

25 Q And then the third one is at the top of

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1 page 6 of Exhibit 1 in your report. And it reads,
2 "Wozniak stated that the battery pack has protections
3 against excessive temperatures inside the cells, page
4 31."

5 Quote, "Each individual cell has a PTC,
6 which is a positive thermal coefficient device," close
7 quote. And quote, "It has a CID, which is a current
8 interrupt device," close quote. Quote, "Which are the
9 two primary factors to help prevent thermal runaway,"
10 close quote, page 32.

11 Open quote, "PTC is designed, if the
12 temperature of the cell exceeds a certain limit, which
13 would be lower than a thermal runaway. It opens up
14 and prevents more energy from being put into the
15 cell," close quote.

16 And then another quote. "CID responds to
17 pressure inside the cell. And as heat can build up,
18 or other conditions within that cell can build up, it
19 opens up, that CID releases that pressure so it
20 doesn't go into thermal runaway," close quote. Page
21 34.

22 Did I read that correctly?

23 A Yes.

24 Q So with respect to the two items that you
25 reference of Mr. Wozniak's testimony, what about those

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1 demonstrates that HP was aware of the potential safety
2 hazards of using non-HP approved packs in their HP
3 notebooks?

4 A Well, Wozniak goes into detail talking
5 about the safety protections that are built into their
6 battery packs. So that leads me to believe that HP
7 was aware of the hazards of lithium ion batteries.

8 And so HP went to great lengths to include
9 safety protections in the HP approved battery packs to
10 prevent incidents from thermal runaways from
11 happening.

12 Q But your statement on page 16 doesn't just
13 indicate that HP is aware of potential safety hazards.
14 It says potential safety hazards of using
15 non-approved -- non-HP approved battery packs.

16 There is nothing in either of those
17 statements by Mr. Wozniak in which he suggests that he
18 is aware that non-approved batteries do not have those
19 safety protections, is there?

20 A He did not say that. No.

21 Q Okay.

22 A That is what I was saying.

23 Q So the point of it is, as far as
24 Mr. Wozniak's testimony is concerned, that you just
25 referenced, the only thing supportive of that sentence

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1 of item 4, that you have of your finding really is the
2 fact that there are safety issues with with battery
3 packs that need to be addressed. That is the Wozniak
4 part.

5 Correct?

6 A The Wozniak part, yes. Pipho I think his
7 name is --

8 Q I said Pipho. I'm not saying I have it
9 right, sir. I'm saying that is how I say it.

10 Do you remember how it was pronounced,
11 Josh?

12 MR. LICATA: I think it was Pipho.

13 A Pipho made the other statement warning
14 against not using HP approved products.

15 Q So setting aside -- Mr. Wozniak's testimony
16 to you demonstrates there is safety issues with
17 respect to battery packs. But you would agree with
18 me, the parts you referenced certainly here today do
19 not demonstrate that Mr. Wozniak was aware of a safety
20 hazard in using non-approved HP battery packs.

21 Correct?

22 You would agree with that?

23 A In the statements that we identified, no,
24 he is not making the statement about non-HP packs.

25 Q Are you aware of any statement of

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1 Mr. Wozniak, in which he makes that statement?

2 A I would have to go through his whole
3 deposition to verify.

4 Q Well, do you make reference in your report
5 to any statement that you relied upon by Mr. Wozniak
6 in which he makes that statement?

7 A No.

8 Q So certainly the only thing that you pulled
9 from his deposition, the only items you pulled from
10 Mr. Wozniak's deposition and used in your report, you
11 would agree, as you sit here today, that they do not
12 support the notion that he was aware of the safety
13 hazard of using non-HP approved battery packs,
14 correct?

15 A I would say none of the statements reflect
16 that.

17 Q Then another one is the Mr. Pipho one, on
18 page 5, where you reference his statement from page 94
19 of his deposition in which he indicates that the
20 battery pack that shipped with the Power notebook
21 contained a warning label that states, "Replace with
22 HP spares."

23 Correct?

24 A Yes.

25 Q And that is it? There is nothing else from

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Transcript of Kenneth J. Kutchek, P.E.

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1 Mr. Pipho that supports item No. 4.

2 Correct?

3 A Not that I recall. I would have to go
4 through his deposition again to be sure.

5 Q But same point. There is nothing that
6 you -- in preparing your opinion -- called out to
7 identify to say, hey, this is what I am relying on in
8 connection with my opinion. The only thing you relied
9 upon, that you disclose in your report, is what you
10 reference on page 5.

11 Right?

12 A Yes.

13 Q And that is, specifically, the testimony we
14 just read from page 94 of Mr. Pipho's deposition.
15 Correct?

16 A Yes.

17 Q Now, you are aware, are you not, that
18 Mr. Power had a prior duplicate version of this
19 Elitebook.

20 Correct?

21 A I do recall him saying he had a second
22 unit. Yes.

23 Q Actually, it was a first unit. Right? In
24 other words, he had it before --

25 A That's right.

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1 Q I am not trying to be funny. You said --
2 what you said was correct. I want to get the timeline
3 correct.

4 Prior to what we have been calling the
5 Power notebook, which is the artifact one that is the
6 subject of this lawsuit, Mr. Power owned another
7 Elitebook 8730W.

8 Correct?

9 A Yes.

10 I do recall that from his deposition.

11 Q All right.

12 Do you know whether Mr. Power bought that
13 8730W Elitebook new or used?

14 A I don't recall. I would have to refer back
15 to the deposition.

16 Q Would you like to refer back to it?

17 A I mean, I have the snippets I have in my
18 report. But I don't have the full deposition here.

19 Q Do you consider of any significance to your
20 opinions in this case whether Mr. Power bought the
21 prior version -- the prior unit, the 8730 that he
22 owned before the one in this case, do you consider any
23 significance whether he bought it new or used?

24 A No.

25 Q Do you know, sir, would you agree with me

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1 if he bought it new, then he would have gotten it with
2 the user manual and things of that nature, that
3 accompany it; correct?

4 A That's true.

5 Q And also, if he bought it new, it would
6 have had a battery pack on it that had the warning you
7 just referenced Mr. Pipho identified in his
8 deposition.

9 Correct?

10 A Yes. It should.

11 Q So if Mr. Power had bought a new unit, and
12 reviewed the owner's manual, or the user's manual, and
13 looked at the unit, he would have received the warning
14 that we have talked about here today. Isn't that
15 true?

16 A I assume so. Yes.

17 Q And you do not know, as you sit here today,
18 whether Mr. Power himself was aware, prior to
19 purchasing the unit that is at issue in this case, of
20 the fact that if you use a non-approved HP battery in
21 your notebook, it could be a safety issue. You don't
22 know one way or the other whether he knew that, do
23 you?

24 A I don't recall that coming up in his
25 deposition.

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1 Q And do you understand, sir, the reason why
2 that didn't come up at his deposition is because at
3 the time of his deposition, the plaintiff's theory was
4 not that this was a non-approved battery pack, but
5 that it was instead a defective HP battery pack. Do
6 you understand that?

7 MR. LICATA: Object to form. You can
8 answer.

9 A No. I don't.

10 Q If you knew that at the time of his
11 deposition the theory of the case was that the battery
12 pack was a defective HP battery pack, and not that it
13 was a non-approved HP battery pack, would you have
14 wanted to speak to Mr. Power to ascertain more about
15 what he knew or didn't know about the computer before
16 rendering your opinion?

17 MR. LICATA: Object to form. You can
18 answer.

19 A I mean, it's hard to say how my thought
20 process would have changed, based on the timing of his
21 deposition.

22 Q Well, I guess my question is, you rendered
23 an opinion here in which you indicate that an
24 authentication warning was not given to Mr. Power.
25 Right? That is part of what your opinion states.

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1 Correct?

2 A Yes.

3 Q And the question I have asked you is, do
4 you know if Mr. Power even needed that warning? And
5 you can't answer that. Can you?

6 A Well, you give warnings to users to remind
7 them. So even if they read it five years prior
8 doesn't mean they remember it. So the purpose of pop
9 up warnings is to remind you there for whatever the
10 purpose of the warning is.

11 Q Okay.

12 But as you sit here today, sir, you don't
13 know if Mr. Power got that warning five years ago --
14 five years before, do you?

15 A No. I don't.

16 Q You don't know if he had that in his head
17 as of the day he was using that computer or not. Do
18 you?

19 A No.

20 Q Because the reality of it is, the only
21 thing you relied upon to determine what Mr. Power did
22 or did not know, or what Mr. Power did or did not
23 think, or what Mr. Power was or was not warned of, was
24 his deposition that took place on July 30th, 2018.

25 Correct?

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1 A Yes.

2 Q And are you aware, sir, of whether or not
3 Mr. Power's negligence is at issue in this case?

4 A Could you repeat that?

5 Q Are you aware that in this case there is a
6 question of whether Mr. Power was himself negligent?

7 A No. I am not.

8 Q Okay.

9 Do you have any -- strike that.

10 If Mr. Power received the warning that we
11 are talking about five years before, and either failed
12 to heed it, or failed to remember it, doesn't that
13 indicate that he himself bears some responsibility for
14 this incident?

15 MR. LICATA: Object to form. You can
16 answer.

17 A I guess I don't know what he would be
18 responsible for, if he got a warning five years prior.

19 Q Well, did you ask him, sir, or do you know
20 whether he retained the documents from the original
21 notebook?

22 A No. I never talked to him.

23 Q Do you know whether Mr. Power went online
24 and looked at -- let me back up.

25 You don't know, do you, that when he bought

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1 the original -- his first Elitebook 8730, you don't
2 know whether he went and looked at the user's manual
3 online, do you?

4 A No. I don't.

5 Q Do you think that that would be important
6 to know in connection with your opinion in this case?

7 A I guess do we know the answer to the
8 question of did he buy it new or not? Do we know that
9 answer?

10 Q I don't know. You work for him. Did you
11 ask him?

12 A Well, was it in his deposition?

13 Q How about you answer my question. You work
14 for him. Did you ask him?

15 A I never talked to him.

16 Q So you didn't ask him that question.
17 Right?

18 A No.

19 Q At the -- I will represent to you, sir, at
20 the time of his deposition, we were under the
21 impression that the theory in this case was not that
22 plaintiff was saying there was an aftermarket or
23 unapproved battery pack in the notebook. The theory
24 of the case that was espoused over and over was it was
25 a defective HP product.

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1 Do you understand that?

2 A I don't know what the theory of the case
3 was during his deposition.

4 Q So let me back up now.

5 I asked this question. Would it be of
6 import to you to know whether or not Mr. Power ever
7 went online before this incident and looked at the
8 user's manual for this product before this incident?
9 Would that be of import to you?

10 A Yes. I would want to know.

11 Q Why would you want to know that?

12 A I would like to determine what warnings he
13 may or may not have received.

14 Q As you sit here today, you don't know, do
15 you?

16 A No.

17 Q Because unless it was asked at his
18 deposition, you weren't going to make any further
19 inquiry about it.

20 Right?

21 A I don't know.

22 Q Well, you didn't make any further inquiry
23 about it, did you?

24 A No. I didn't.

25 Q So you looked at thousands of pages of HP

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1 documents. You read two HP deposition transcripts.
2 You went and researched things on the patent -- from
3 the patent office. But you never picked up the phone
4 and called your client to say, "Hey, what did you
5 know, and when did you know it?"

6 A I already told you I didn't talk to him.

7 Q All right.

8 Do you know, sir, who Mr. Power bought the
9 Power notebook, or we are talking about as the
10 artifact notebook from, do you know who he bought it
11 from?

12 A My understanding is he bought it on eBay.

13 Q Are you aware Mr. Power has a receipt or a
14 credit card transaction that indicates from whom he
15 bought it?

16 A I vaguely remember there being some
17 purchasing records from eBay.

18 Q Did you review those records?

19 A Yes.

20 Q I don't believe you reference reviewing
21 those records in your report.

22 Do you?

23 A It would have been included in the list of
24 materials reviewed.

25 Q All right.

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1 If you could just take a look at your
2 available information, which I understand that is a
3 list of materials reviewed.

4 Is that fair?

5 A Yes.

6 Q Can you identify for me where in that list
7 of materials reviewed is the eBay purchase
8 information?

9 A I don't see it listed. I think it may have
10 been discussed in his deposition.

11 Q All right.

12 Did you make any effort to contact the
13 seller?

14 A No. I didn't.

15 Q Do you know how much Mr. Power paid for the
16 computer he bought off of eBay?

17 A I don't recall the exact number. But it
18 was a couple hundred dollars.

19 Q Would you be -- are you aware that he
20 initially bought it for one price, then he got a
21 discount of 100 bucks afterwards?

22 A I do recall something of the fact at his
23 deposition.

24 Q Do you know when he bought it?

25 A I don't recall.

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1 Q Is it fair to say, sir, that because you
2 never talked to the eBay seller, that you don't know
3 what the eBay seller did to this notebook computer
4 prior to selling it to Mr. Power. Correct?

5 A Correct.

6 Q Do you know if the seller installed any
7 software?

8 A I don't know.

9 Q Do you know if the seller uninstalled any
10 software?

11 A I don't know.

12 Q Do you know if the seller had any computer
13 expertise?

14 A I don't have any information about the
15 seller and the laptop prior to Mr. Power's --

16 Q So it's fair to say you don't know, aside
17 from the battery pack, do you know if the seller did
18 anything else to the hardware?

19 A No. I don't.

20 Q Did you make any effort to determine what
21 aspects of the Power notebook were original to the
22 notebook and what were not?

23 A I think it was determined that, again, I
24 think it came out of one of the HP reps saying that
25 they believe the battery pack was to be a non-HP

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1 approved pack, but they did believe the charger was an
2 HP product, HP approved product.

3 Q Do you know if the HP -- the charger, the
4 AC adapter, can we use those terms synonymously?

5 A Yes.

6 Q I like AC adapter. Do we know if the AC
7 adapter was original to this notebook? Or just an HP
8 product?

9 A I don't think we know if it is original or
10 not.

11 Q So setting aside the battery pack and the
12 AC adapter, did you do anything to determine if any
13 other aspects of the notebook computer were original
14 to the computer?

15 A No. I didn't.

16 Q Did you do anything -- I am not trying to
17 be difficult here, but I have to put things on the
18 record. I know you said you never talked to the
19 seller. Is it fair to say that you do not know
20 whether or not the seller physically abused this
21 notebook before it was sold, do you?

22 A I don't know what they did to the notebook.

23 Q Do you know if the prior seller did
24 anything to the safety features of this notebook
25 before selling it?

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1 A No. I don't.

2 Q You don't know what caused this battery
3 pack to go into thermal runaway, do you?

4 A No. I don't.

5 Q So as you sit here today, you do not know
6 whether the battery pack went into thermal runaway
7 because it was a non-approved HP battery pack, or for
8 some other reason related to the actions taken by the
9 seller, isn't that true?

10 A I don't know what actions you are referring
11 to by the seller that would have caused a thermal
12 runaway some time later.

13 Q But you don't know, because you never
14 investigated whether the notebook itself was in
15 substantially similar condition as it was when it left
16 HP's hands.

17 Correct?

18 A Say that again.

19 Q Mr. Hannaford, can you please read that
20 back?

21 (Record read.)

22 A I inspected the laptop after it was heavily
23 fired -- heat damaged, so it is difficult to say the
24 condition it was in prior to the incident.

25 Q Well, you never took it apart, did you?

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1 A I did not.

2 Q So you never disassembled it and compared
3 it to a disassembled exemplar to determine if it looks
4 the same.

5 Correct?

6 A No. I thought we may do that as a joint
7 inspection. But we never did. I would never touch
8 evidence like that without other parties being there.

9 Q Did you ever proffer a protocol for such a
10 joint inspection?

11 A No. I didn't. I don't recall anything in
12 HP depositions that said anything about, specifically,
13 that after the CT scan whether any components within
14 the laptop were not HP components.

15 Q Do you know if any of those HP people even
16 ever looked at those CT scans, sir?

17 A No. I don't.

18 Q Okay.

19 Have you ever obtained a patent?

20 A No. I haven't.

21 Q Have you ever filed for one?

22 A No. I haven't.

23 Q Do you have any legal training in patent
24 law?

25 A No. I don't.

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1 Q Do you know what the typical time between
2 filing of a patent and when a patent is issued is?

3 A No. I don't.

4 Q Do you know what different types of patents
5 there are?

6 A I don't recall.

7 Q Is it you don't recall -- did you ever
8 know, or do you just not recall today?

9 A I am aware there are different type
10 patents. But I don't recall what they are today.

11 Q Does the fact that a patent is either
12 applied for or issued mean that the technology
13 referenced in the patent is going to come to market?

14 A No. It doesn't.

15 Q In fact, there is a zillion patents that
16 have been issued by the patent office that have never
17 seen the light of day. Isn't that true?

18 A I don't know about your quantification of a
19 zillion. But there may be some, yes.

20 Q Kudos to you, sir, because that was a
21 freebie for you. I wanted to see if you would nail me
22 on the zillion part, because I was having a little fun
23 there.

24 In seriousness, you would agree that there
25 are multitudes of patents that have been issued by the

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1 patent office, that have never gone to market. True?

2 A Yes.

3 Q And the reason for that, at least one
4 reason, is that there is an incentive to file for
5 patents to protect your intellectual property.

6 In other words, if you come up with an idea
7 or an invention, you want to file the patent as soon
8 as you can reasonably do it, so you get your
9 intellectual property protected. And then you figure
10 out, basically, whether you can bring it to market in
11 a manner that is successful and will make you money,
12 and things of that nature.

13 Isn't that true?

14 A Yes.

15 I agree that filing a patent is for
16 intellectual property reasons.

17 Q But my point is, there is incentive to do
18 it sooner than later, because you get protection of
19 your intellectual property upon filing, but you don't
20 necessarily -- you don't get protection, if you don't
21 file, right? Somebody could steal your invention,
22 basically, right?

23 A Correct.

24 Q You reference -- why don't you tell me, you
25 reference some patents beginning on page 14 over to

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1 15, you reference some patents that you contend
2 pertain to component part authentication, or I guess
3 your word, if you are not happy with that word,
4 replaceable component authentication. Is that
5 correct?

6 A Yes.

7 Q Can you just tell me for the record what
8 you did to identify these patents as being applicable?

9 A I searched numerous patents regarding
10 laptop batteries and authentication of components,
11 inkjet cartridges, and telephones. I was just
12 searching on authentication of components in
13 electronic products.

14 Q All right.

15 Maybe your question is more thoughtful --
16 or answer is more thoughtful than my question.

17 What did you do? I think earlier you said
18 you went to Google. Right? Is that what you did?
19 What did you Google?

20 A I would Google all of -- any and all of
21 those words. It took multiple searches to find these.
22 It was Googling words like "authentication" and
23 "electronic power products." "Authentication of
24 components." So it was numerous searches to identify
25 various patents.

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1 Q Did you do anything, sir, to determine
2 whether any of these patents actually went to market?

3 A No. I didn't. I mean, it doesn't matter
4 if they went to market. It is saying the technology
5 was out there, and people were aware of it. When
6 someone files for a patent, that means it is public
7 knowledge at that point.

8 Q All right.

9 So with respect to my question, you didn't
10 do anything to determine whether or not these patents
11 actually made it to the marketplace.

12 Correct?

13 A Correct.

14 Q All right.

15 You are not suggesting in your testimony
16 that someone could copy what is in those patents.
17 Correct?

18 A You know, a patent -- no. Short answer is
19 no. But the idea of a topic is presented. And the
20 method that one manufacturer uses to accomplish
21 something may be different than what another
22 manufacturer uses.

23 But for example, authentication could be
24 done in different ways. So it was just saying that
25 the ability to do authentication was known at that

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1 time those patents were issued.

2 Q Right.

3 But what I am saying to you is that -- I
4 think you agree, I want to just get to my question, if
5 you don't mind. You agree that one could not go to
6 the patent office, take the patent application, and
7 copy that and do the authentication. You agree with
8 that statement.

9 Correct?

10 A Correct.

11 Q And you reference manufacturing. I want to
12 be clear about this. Because I think you were saying
13 it generically. But I want to make sure.

14 It is not just about manufacturing. One
15 cannot copy the design that is set forth in the
16 patent, because you would be violating the
17 intellectual property rights of the patent holder.
18 Isn't that true?

19 A Yes. I was using the word "manufacturer"
20 generically. And I was referring to design and
21 manufacturing.

22 Q So one cannot copy the design or
23 manufacturing -- to the extent the manufacturing is
24 unique to the patent, one cannot copy that either.
25 Correct?

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1 A Not specifically as detailed in the patent.
2 Correct.

3 Q Well, you are not an expert in patent law.
4 So you say "not specifically." What do you think --
5 why don't you state for the record what you think one
6 can copy from a patent?

7 A If one entity files a patent for a product,
8 they may be implementing that technique in a very
9 specific way. If another manufacturer wants to use a
10 similar idea, but implement it in a different way,
11 they are able to do that, as long as they don't
12 infringe that first patent.

13 Q You have no expertise whatsoever in battery
14 pack or battery cell design.

15 Correct?

16 A Correct.

17 Q And you have no expertise whatsoever with
18 respect to computer notebook design or manufacturing,
19 correct?

20 A Correct.

21 Q And so you yourself, as you sit here today,
22 have no way of knowing what could or could not be used
23 from any of the patents that you are talking about in
24 your report by another party.

25 Correct?

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1 A No. I mean, I am an engineer. I can see
2 what the patent says. I understand what the patent
3 says. I can see how a manufacturer would implement
4 that patent based on the words they use in their
5 patent and their drawings and designs. And then see
6 how another manufacturer may do something similar but
7 not infringe that patent.

8 Q Okay.

9 Did you, in this case, undertake in your 20
10 to 30 hours worth of work to ascertain whether or not
11 HP could use anything from any of these patents that
12 are not its own in connection with its notebook
13 computers? Did you do that work, sir?

14 A It was just my analysis of the patents,
15 yes.

16 Q So now state for the record, specifically,
17 what HP could have used from those patents? Design,
18 sir. The design work. Please. Mr. Engineer.

19 A Are you done?

20 Q Go.

21 A I would have to go through each one one at
22 a time.

23 Q Well, you don't reference any of that in
24 your report. Do you?

25 A My point in my report was that the

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1 technology was known and available at the time.

2 Q Well, it wasn't available. Because you
3 can't use someone else's patented work, sir.

4 Right?

5 A We already talked about that. You can't
6 copy an exact patent. But you can do things that are
7 similar and not infringe upon the patent.

8 Q You do not know, you have no idea, sir,
9 where the line is with respect to computer design or
10 battery pack design where someone could, quote,
11 unquote, "use some of it, but not use all of it." Do
12 you?

13 A What is your question?

14 Q That is my question.

15 Isn't it true, the reason why -- the
16 reference you make to these patents, the only reason
17 you reference these patents is to demonstrate that the
18 notion of authentication was out there.

19 It is not to suggest that anyone could
20 reverse engineer authentication from these patents,
21 sir. And you don't have any legal ability or
22 knowledge to suggest that.

23 Do you?

24 A I never mentioned anything about reverse
25 engineering these patents. So you are putting words

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1 in my mouth there. And so --

2 Q That is what you are saying. That is.

3 MR. LICATA: Would you let the witness
4 answer, please?

5 Q I am sorry. Go ahead. I apologize.

6 A Let's go back.

7 What is your question?

8 Q Okay.

9 Mr. Hannaford, would you read back my
10 question before I interrupted the witness?

11 And I apologize again.

12 (Record read.)

13 Q I strike the question.

14 Certainly -- I think you agree with me you
15 are not suggesting someone can reverse engineer these
16 patents.

17 Correct?

18 A No.

19 Q No, you are not?

20 A No, I am not.

21 Q Okay.

22 Is it correct that your reference to these
23 patents is to demonstrate that the notion of
24 authentication was out there?

25 A Yes. My point is the technology was

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1 available at the time.

2 Q Well, it was certainly, in your estimation,
3 available to the four patent holders indicated.
4 Correct?

5 A I don't recall the number I referenced in
6 my report. But yes, those are ones -- those are some
7 of the ones that are available, and I chose to put in
8 the report.

9 Q And with respect to you say at the time --
10 and that is a good question. When is the time? What
11 is the time frame?

12 Because you would agree with me that with
13 respect to the BlackBerry patent, that was applied for
14 and granted long after the manufacture, years after
15 the manufacture of the Power notebook.

16 Correct?

17 A The BlackBerry one was in 2011. Yes. But
18 the others I mentioned are -- the HP one I mentioned
19 is in 2008.

20 Q I will get to them. Don't worry. I will
21 get to them.

22 So the BlackBerry one is not at the time.
23 Correct?

24 A Correct. It was after.

25 Q And the same is, actually, true for the

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1 Panasonic one, the battery authentication.

2 Correct?

3 A It was applied in September 2009. That
4 would be --

5 Q Go ahead.

6 A That time frame is close to the time of
7 manufacturing.

8 Q But it is after. Isn't it? That is just a
9 matter of just looking at a calendar. If you look at
10 Bates stamp 2466, it says in it, which is part of the
11 documents you reviewed, the manufacturing date of the
12 Power notebook was August 18, 2009.

13 So that Panasonic one is, again, after the
14 manufacture. And as you indicated, probably a year or
15 two after the design of the notebook.

16 Correct?

17 A Yes. It is.

18 Q And then there are two others you refer to.
19 There is a HP patent with respect to inkjet printer
20 cartridges authentication.

21 And that was applied for in 2008, which is
22 before the manufacture of the Power notebook. But you
23 don't know whether it was before the design of the
24 notebook.

25 Fair?

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1 A It was in the time frame that I would
2 expect the design to have been taking place.

3 Q That patent wasn't even granted until after
4 the manufacture.

5 Correct?

6 A Correct.

7 Q Do you know the purpose of the
8 authentication patent that HP applied for?

9 A No. I don't know their intent when they
10 applied for the application.

11 Q In other words, do you know whether it was
12 applied for as a safety issue, or was it applied for
13 because they wanted to sell more inkjet printer
14 cartridges?

15 A I don't know.

16 Q And did you do anything to try to find out?

17 A I read the patent. I don't recall if that
18 was mentioned in there or not.

19 Q And then the final patent you reference is
20 the Lexmark International patent related to ink
21 cartridge authentication and inkjet printers. And one
22 was applied for in 2005.

23 And it looks like it was issued in
24 September of 2005. And then another one was applied
25 for in 2005 that was issued in September of 2009.

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1 Correct?

2 A Yes.

3 Q So at least with respect to those two
4 patents, they appear to have been applied for before
5 the manufacturing date. One of them was issued before
6 the manufacturing date of the Power notebook, and then
7 the other one was issued after the manufacture date.

8 Correct?

9 A Yes.

10 Q So of the patents you reference in your
11 report as evidence that authentication technology was,
12 quote, "available at the time," the only ones that
13 were applied for before the manufacturing date of the
14 Power notebook were ones pertaining to inkjet printer
15 cartridges.

16 Correct?

17 A Yes.

18 Q Do you know whether inkjet printer
19 cartridges are -- I'm trying to think of a way to say
20 this.

21 Whether they are made and sold by the same
22 manufacturer, meaning in connection with HP, for
23 example the HP printer, do you have an understanding
24 of whether or not the printer cartridges that HP was
25 selling were all under HP's house -- all under HP's

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Transcript of Kenneth J. Kutchek, P.E.

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1 umbrella?

2 A I am not familiar with their inkjet printer
3 cartridge manufacturing.

4 Q Do you believe -- do you know -- let me put
5 it this way.

6 Did you do anything to determine whether
7 the technology that is described in the patents for
8 the HP printer and for the Lexmark -- printer
9 cartridge and the Lexmark printer cartridge, did you
10 do anything to determine whether that technology could
11 be incorporated into notebook computers?

12 A No. I did not do any additional work. I
13 mean, as an engineer, I would see that the technology
14 can be used in various industries.

15 Q Did you look at any -- fair to say that
16 the -- strike that.

17 That is something you could have tested.
18 Right?

19 A What could I have tested?

20 Q In other words, one could test, if one
21 wanted to, the prospect of whether the technology from
22 the HP printer cartridge patent, or from the Lexmark
23 printer cartridge patent, could be used for
24 authentication purposes in a notebook computer?

25 A Well, it is an electronic component. I

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Transcript of Kenneth J. Kutchek, P.E.

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1 mean as an electronic component, that is what these
2 patents are about is that you can authenticate
3 components used in a product.

4 Q Right.

5 But I am saying to you, there is specific
6 technology referenced in both of these patents. And I
7 am just asking you, one could, I am not saying you
8 did, but one could test whether or not the technology
9 in those patents in the HP printer cartridge and the
10 Lexmark printer cartridge patent, whether that could
11 be implemented in a notebook computer.

12 Correct?

13 A Yes. One could do that.

14 Q But you did not do that.

15 Correct?

16 A No.

17 Q No, you did not?

18 A No, I did not.

19 Q Now, with respect to authentication, did
20 you undertake to determine whether any notebook
21 computers in the marketplace in 2009 used battery
22 authentication?

23 A I attempted to, but it is difficult to find
24 information on products from ten years ago, 12 years
25 ago.

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1 Q So is it fair to say you tried to determine
2 whether it was in the marketplace, but you couldn't do
3 so.

4 Is that correct?

5 A Correct.

6 Q And are you aware, sir, of whether there
7 were any standards regarding battery pack design, that
8 were in place in 2008 and 2009?

9 A There is an IEEE standard for laptop
10 battery packs.

11 Q Had you read that prior to seeing my
12 experts' reports?

13 A I was aware of it, yes.

14 Q I asked if you read it. Had you read it
15 before you saw my experts' reports?

16 A Yes.

17 Q You certainly did not consider the IEEE
18 standard as important or necessary to your opinions,
19 because you don't reference it in your report. Is
20 that fair?

21 A I wouldn't qualify it as saying it was
22 unimportant. I just failed to refer to that IEEE
23 standard in my report.

24 Q And you don't rely upon that report -- that
25 IEEE standard in your report, isn't that true?

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Transcript of Kenneth J. Kutchek, P.E.

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1 A I did not.

2 Q Now are you -- did you do anything, sir, to
3 determine whether or not knockoff batteries, or the
4 safety issues pertaining to, quote, unquote, "knockoff
5 batteries" was considered -- strike that. That is not
6 going to make sense.

7 Are you aware, even as you sit here today,
8 whether or not authentication protocols or
9 authentication software are defeated by unscrupulous
10 sellers of things like batteries?

11 A Some authentication can be defeated,
12 depending on how it is implemented, and how
13 sophisticated it is.

14 Q Well, let's talk about with respect to
15 notebook computers.

16 How does the authentication system work in
17 notebook computers?

18 A There is different ways to do it.

19 Q Why don't you tell me about those.

20 A I mean, there is different ways a
21 manufacturer can do it. I don't know all of the
22 possible ways to implement authentication.

23 I mean, in the HP depositions, they
24 referred to two means that were used in this
25 particular laptop. And that was the way the battery

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1 connects and interfaces mechanically. And also the
2 three pin -- three conductor electrical connection to
3 the battery pack. So that is one means of
4 compatibility. But authentication would be something
5 more extensive than that.

6 Q Okay.

7 So how would authentication work?

8 A I mean, the product, the laptop would have
9 to somehow be able to validate the component that is
10 being installed.

11 And so that could be done with some
12 electronic means or some componentry within the
13 product to allow for a validation that it is an
14 authentic product.

15 Q So isn't it true, sir, that these types of
16 authentication protocols are now routinely defeated by
17 hackers?

18 A I don't know about routinely. But they can
19 be defeated at times.

20 Q Would you be surprised to learn that every
21 single one of the patented items you referenced in
22 your report has knockoff versions of it being sold
23 presently?

24 A I'm not aware of that.

25 Q Did you do anything to ascertain whether

NETWORK DEPOSITION SERVICES
Transcript of Kenneth J. Kutchek, P.E.

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1 the patented items that you reference in your report
2 worked?

3 A I don't know what you mean by worked.

4 Q How about that they prevented people from
5 using unauthentic components; how about that for
6 worked?

7 A No. I'm not aware of that.

8 Q You don't know one way or the other as you
9 sit here today.

10 Is that fair?

11 A Correct.

12 Q We are at 12:15. I don't have much more,
13 Josh. If we could take maybe a five to ten minute
14 break. Let me look at my notes. It might save us
15 time.

16 Is that okay with you, Mr. Kutchek, rather
17 than taking a break? I think we can be done
18 relatively soon, if I make sure I got everything.
19 Okay?

20 A Yes.

21 MR. LICATA: Fine with with me.

22 MR. BETKE: Let's take a five to ten minute
23 break. I may come back a little sooner. If I
24 do, and you are here, great. If not, that's
25 okay, too.

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Transcript of Kenneth J. Kutchek, P.E.

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1 VIDEOGRAPHER: We are off the record. Time
2 is approximately 12:16 p.m.

3 (Recess taken.)

4 VIDEOGRAPHER: We are back on the video
5 record. Time indicated is 12:27.

6 Q Back on the record.

7 The issue of whether or not any of the
8 patents that you referred to in your report, whether
9 they have been defeated by hackers, that is something
10 you could check, isn't it?

11 A I'm not aware of what specific products
12 those patents are actively being used in to be able to
13 check that.

14 Q Well, I mean, one thing you could do is you
15 could get an exemplar of these products, and then just
16 go on and see if you can go online and buy a
17 non-approved product and use it?

18 A Again, I don't know what products are
19 actively using the patents that are listed.

20 Q So the point is you never checked that?

21 A I did not.

22 Q Okay.

23 And then with respect to we were talking
24 earlier about patents and what they show. I indicated
25 that I was asking whether HP could or could not

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1 duplicate it. But hackers operate under no such bar.

2 Right?

3 In other words, while intellectual
4 property -- while patents protect intellectual
5 property, they also provide the opportunity for
6 unscrupulous people to look at the patent and reverse
7 engineer things.

8 Don't they?

9 A It is possible. Yes.

10 Q Are you aware, sir, in the industry, and I
11 am really speaking, specifically, about consumer
12 electronic products, whether there is a timeline, a
13 known timeline between when a particular product goes
14 to market with authentication technology and how long
15 it takes hackers to defeat it?

16 A I guess I missed the question part.

17 Q I am saying are you aware of the timeline
18 that is known in the industry between when
19 authentication technology is put into service, and how
20 long it takes hackers to defeat it?

21 A No. I'm not aware how quickly hackers
22 attempt to defeat authentication.

23 Q All right.

24 And you would agree that if a hacker --
25 strike that.

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1 Are you aware of commercially available
2 devices that permit unscrupulous people like hackers
3 to, quote, unquote, "listen in" on the authentication
4 communications in a notebook and a battery pack, in
5 order to duplicate it?

6 A Am I specifically aware of this? Is that
7 the question?

8 Q Yes.

9 A Not specifically aware. No.

10 Q Are you generally aware of it?

11 A I am aware that that is a technique that
12 can be used. Yes.

13 Q Have you ever heard of a device called the
14 Beagle?

15 A No. I haven't.

16 Q Have you ever heard of a company called
17 Saleae, S-A-L-E-A-E?

18 A No. I haven't.

19 Q Which is a logic analyzer.

20 A No. I am not specifically aware of that
21 product.

22 Q Do you know what a logic analyzer is?

23 A Yes.

24 Q What is it?

25 A It's a device that is used to analyze

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1 communication between devices. And can be used for
2 quality control or reverse engineering.

3 Q Do you know, did you ever analyze the logic
4 of the power notebook to see if it had been tampered
5 with or changed?

6 A No. It was not functional.

7 Q It you attempt to -- did you attempt to use
8 it? In other words, did you attempt to power it up?

9 A No. I didn't.

10 Q Do you agree, sir, there exists technology
11 that permits hackers to defeat authentication?

12 A Yes. There are some products that assist
13 in defeating software authentication.

14 Q All right. I have no further questions,
15 sir.

16 EXAMINATION

17 BY MR. LICATA:

18 Q Mr. Kutchek, I just have a couple. You
19 were asked whether you knew whether Mr. Power bought
20 the at-issue laptop new or used. Do you remember
21 that?

22 A I think he was asking about the first
23 laptop. The one he had prior to this one.

24 Q Okay.

25 Do you know -- do you know how about -- the

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1 at-issue laptop, do you know whether that was new or
2 used when he purchased it?

3 A My understanding is the subject laptop was
4 purchased used on eBay.

5 Q Okay.

6 You were also asked whether you did
7 anything to determine whether the laptop -- the
8 at-issue laptop was in substantially changed condition
9 from when it was initially purchased and when
10 Mr. Power purchased it, or some variation of that line
11 of questioning.

12 I just want to refer your attention to page
13 6 of your report, the second paragraph up from the
14 bottom. It starts -- I guess they all start with
15 "Wozniak."

16 But it is the second one up from the
17 bottom.

18 A Okay. I am there.

19 Q It says, "Wozniak stated that the notebook
20 charging circuit is not easily replaced. Quote, 'I am
21 sure there is no pin for pin replacement,' end quote.
22 Quote, 'And these are tiny micron distances,' unquote.
23 Quote, 'Not something you can do without magnification
24 and a very steady hand,' end quote. Page 62."

25 Did I read that correctly?

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1 A Yes.

2 Q What was the significance of including that
3 section in your report?

4 A Wozniak is an engineer. It leads me to
5 believe that he is saying it's not easily changeable
6 is what he is saying in this paragraph, that the
7 charging circuit is not easily replaced. It is very
8 small componentry. The average person just could not
9 do something like that.

10 Q And what is the point of the charging
11 circuitry?

12 A The charging circuit is what is sending
13 power to the battery pack, so it is involved in
14 charging the battery pack, and so it's an important
15 component. The battery pack itself has safety
16 protections, but there should be safety protections
17 built into the charge circuit.

18 Q I think we already went through this. But
19 you are not suggesting that Hewlett-Packard, back when
20 this at-issue device was manufactured, that they
21 should have copied various patents that you list in
22 your report. You are not suggesting that, right?

23 A No. I am not saying anyone should copy a
24 patent.

25 Q You are not suggesting they should reverse

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Transcript of Kenneth J. Kutchek, P.E.

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1 engineer any of these patents that you were listing in
2 your report?

3 A No. I am not.

4 Q The reason why you are listing these things
5 in your report is just to show that the information
6 and knowledge was available at the time that this
7 machine was manufactured?

8 A That's correct.

9 Q You are not -- your expert opinions today
10 are not what caused the explosion in this case?

11 A That's correct. I did not --

12 Q You are not doing any type of fire origin
13 expert opinion? You are not offering any fire origin
14 opinion?

15 A That's correct.

16 Q Your sole opinion is that with --
17 essentially, I know you have your nine summary kind of
18 breakdowns of your opinion, but your opinion in this
19 case is that the technology existed to warn a user
20 like Mr. Power, through a pop up window, that a non-HP
21 approved battery pack being used posed a potential
22 risk of harm.

23 Is that your opinion?

24 MR. BETKE: Objection to form.

25 A Yes. That summarizes a few of the

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1 findings, yes.

2 Q That is all the questions I have. Thank
3 you, Mr. Kutcek.

4 EXAMINATION

5 BY MR. BETKE:

6 Q I have one to two to follow up on.

7 Mr. Licata asked you about the patents and
8 the purpose that you reference them in your report. I
9 think it was a bit unintentionally imprecise. I want
10 to go back to that.

11 He indicated it was available, quote,
12 unquote, "at the time." But we went through the
13 timeline. I think you agreed, and I want to make sure
14 we are clear, that of the four patents you reference
15 in your report, the only two patents that were applied
16 for prior to the manufacture of the Power notebook
17 were the two related to printers.

18 Correct?

19 A Yes.

20 Q So you weren't trying to change the
21 timeline when you answered Mr. Licata's question.

22 Correct?

23 A That's correct.

24 Q I think that is all I have, actually.

25 MR. LICATA: I think Ken already indicated

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Transcript of Kenneth J. Kutchek, P.E.

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1 he would read.

2 MR. BETKE: Then we are done.

3 VIDEOGRAPHER: With there being no further
4 questions, our deposition is concluded. The time
5 is approximately 12:39 p.m.

6 THE COURT REPORTER: Are you ordering
7 transcripts?

8 MR. BETKE: Yes. Please also send it to
9 docket@Coughlin Betke.com.

10 MR. LICATA: Yes.

11 (Thereupon, at 12:41 p.m. the deposition
12 was concluded.)

13 -- -- --

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Transcript of Kenneth J. Kutchek, P.E.

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1 ERRATA SHEET

2 I, Kenneth Kutchek, P.E., have read the foregoing
 3 95 pages of my deposition given on January 4, 2022,
 4 and wish to make the following, if any amendments,
 5 additions, deletions or corrections:

Page/Line	Should Read	Reason for Change
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19 In all other respects, the transcript is true and
 20 correct.

21

22 _____
 23 Kenneth Kutchek, P.E.

24 Subscribed and sworn to before me this _____ day of

25 _____, 2022.

26

27 _____
 28 Notary Public

29

- - -

NETWORK DEPOSITION SERVICES
Transcript of Kenneth J. Kutcek, P.E.

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1 CERTIFICATE

2 COMMONWEALTH OF PENNSYLVANIA,)
3) SS:
4 COUNTY OF ALLEGHENY.)

5 I, Lance E. Hannaford, do hereby certify that
6 before me, a Notary Public in and for the Commonwealth
7 aforesaid, personally appeared KENNETH KUTCHEK, P.E.,
8 who then was by me first duly cautioned and sworn to
9 testify the truth, the whole truth, and nothing but
10 the truth in the taking of his oral deposition in the
11 cause aforesaid; that the testimony then given by him
12 as above set forth was by me reduced to stenotypy in
13 the presence of said witness, and afterwards
14 transcribed by means of computer-aided transcription.

15 I do further certify that this deposition was
16 taken at the time and place in the foregoing caption
17 specified, and was completed without adjournment.

18 I do further certify that I am not a relative,
19 counsel or attorney of either party, or otherwise
20 interested in the event of this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 and affixed my seal of office at Pittsburgh,
23 Pennsylvania, on this 13th day of JANUARY, 2022.

24 

25 Lance E. Hannaford, Notary Public
My commission expires October 19, 2022

- - -

NETWORK DEPOSITION SERVICES
Transcript of Kenneth J. Kutchek, P.E.

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1 NETWORK DEPOSITION SERVICES
The Gulf Tower
2 707 Grant Street, Suite 1101
Pittsburgh, Pennsylvania 15219
3 412-281-7908

4 January 13, 2022

5 TO: Josh Licata, Esquire
Friday & Cox:
6 1405 McFarland Road
Pittsburgh, Pennsylvania 15216

7 RE: DEPOSITION OF KENNETH KUTCHEK, P.E.

8 NOTICE OF NON-WAIVER OF SIGNATURE

9
10 Please have the deponent read his deposition
transcript. All corrections are to be noted on the
preceding Errata Sheet.

11
12 Upon completion of the above, the deponent must
affix his signature on the Errata Sheet, and it is to
then be notarized.

13
14 Please forward the signed original of the Errata
Sheet to Mr. Christopher Betke, Esquire, for
attachment to the original transcript, which is in his
15 possession. Send a copy of same to me.

16 Please return the completed Errata Sheet within
thirty (30) days of receipt hereof.

17
18
19 Lance Hannaford,
Court Reporter

20 - - -
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22
23
24
25